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999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 7008

DATE COMPLAINT FILED: February 8, 2016

DATE OF NOTIFICATION: February 16, 2016

DATE OF LAST RESPONSE: April 22, 2016

DATE ACTIVATED: May 10, 2016

EXPIRATION OF SOL: December 3, 2020

ELECTION CYCLE: 2016

COMPLAINANTS:

American Democracy Legal Fund

RESPONDENTS:

Jon Keyser

Jon Keyser for Senate and Paul Kilgore in his
official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30125(e)(1)(A)

11 C.F.R. § 100.72

11 C.F.R. § 300.2(m)

11 C.F.R. § 300.61

INTERNAL REPORTS CHECKED:

Disclosure reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

In December 2015, Jon Keyser, a Colorado state legislator then considering running for the U.S. Senate in Colorado, traveled to Washington, DC to meet potential supporters and attend the Republican Jewish Coalition ("RJC") 2016 Presidential Candidate Forum. The Complaint alleges that Keyser solicited \$3 million in soft money for his Senate campaign at that event, and thereby violated 52 U.S.C. § 30125(e)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("Act"). The Complaint also alleges that if outside groups use soft money to pay for communications supporting Keyser's candidacy, they would thereby be providing illegal in-kind contributions to Keyser's campaign. Because these allegations are either

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1 speculative or unsupported by the available record, we recommend that the Commission find no
2 reason to believe that Jon Keyser and his authorized campaign committee violated the Act or the
3 Commission's regulations as alleged.

4 II. FACTUAL BACKGROUND

5 Jon Keyser declared his candidacy for the U.S. Senate on January 11, 2016, and
6 designated Jon Keyser for Senate as his authorized campaign committee and Paul Kilgore as its
7 treasurer.¹ Prior to declaring his candidacy, Keyser traveled to Washington, DC to attend the
8 RJC Presidential Candidate Forum, which was held on December 3, 2015.² The Complaint
9 alleges that the National Republican Senatorial Committee ("NRSC") invited Keyser to
10 Washington, DC as part of its effort to court him to run by "set[ting] up meetings to show him
11 that they had donors and 'folks on the soft money side who were ready to support him.'"³ The
12 Complaint further alleges that Keyser solicited campaign funds while at the forum and "received
13 \$3 million in commitments of soft money to back his campaign at the event."⁴ This allegation is

¹ See Jon Keyser Statement of Candidacy (Jan. 11, 2016); Resp. at 2 (Mar. 2, 2016); Keyser Affidavit ¶ 2. Keyser declared his candidacy for the U.S. Senate on January 11, 2016, although he concedes that he privately made the decision to become a candidate several days earlier, on January 7, 2016. Resp. at 2; Keyser Affidavit ¶ 2.

² RJC and its Executive Director, Matthew Brooks, were initially notified of the complaint in this matter. After further review, the Office of the General Counsel determined that the notification was in error and the notification letter was rescinded.

³ See Compl. at 1–2 (Feb. 8, 2016) (quoting Elena Schneider, NRSC Chasing New Colorado Senate Candidate, POLITICO PRO (Dec. 10, 2015), <https://www.politicopro.com/campaigns/story/2015/12/republicans-recruiting-their-new-dream-colorado-senate-candidate-082754>).

⁴ See Compl. at 2 (quoting Ernest Luning, Keyser Poised to Jump Into Senate Race, COLORADO STATESMAN (Dec. 10, 2015), <http://www.coloradostatesman.com/996385-keyser-poised-jump-senate-race> ("Following a recent visit to Washington, D.C., where Keyser attended the Republican Jewish Coalition's presidential forum luncheon last week as an invited guest on a day off from his duties, he received \$3 million in commitments of soft money to back his campaign, said a source familiar with the matter.")). To the extent the Complaint argues that Keyser solicited or received soft money at the RJC event, it does so by misquoting the Colorado Statesman article. That article indicates that Keyser received funding commitments "[f]ollowing a recent visit to Washington, D.C.," Luning, *supra*, and not, as the Complaint claims, "at the event," Compl. at 2.

1 based on two news articles, both of which are attached to the Complaint.⁵ The Complaint argues
2 that by soliciting soft-money funds, *i.e.*, funds outside the source restrictions and amount
3 limitations of the Act, for his campaign, Keyser triggered candidacy and violated Section
4 30125(e)(1)(A) of the Act.⁶ The Complaint also argues that if "outside groups" uphold their
5 alleged commitments and spend soft-money funds on communications supporting Keyser, those
6 communications would be "coordinated" and the funds spent on them would constitute illegal in-
7 kind contributions to Keyser's campaign.⁷

8 Keyser, Jon Keyser for Senate, and Paul Kilgore in his official capacity as treasurer
9 ("Respondents") deny the allegations.⁸ Respondents aver, in a response supported by Keyser's
10 sworn affidavit, that Keyser "did not solicit or accept any contributions" when he attended the
11 RJC forum, or at any other point prior to becoming a candidate.⁹ Respondents argue that Keyser
12 was not a candidate when he attended the RJC forum, but was instead "testing the waters" of a
13 potential candidacy, and, as part of that process, he traveled to meet with potential supporters and
14 "receive[d] offers of support which helped to convince him to enter the race."¹⁰ They argue that

⁵ See Luning, *supra*; Schneider, *supra*.

⁶ Compl. at 3; see 52 U.S.C. § 30125(e)(1)(A).

⁷ Compl. at 4.

⁸ Resp. at 1. Jon Keyser Statement of Candidacy at 1. Jon Keyser for Senate is Keyser's authorized campaign committee, and Paul Kilgore is its treasurer of record. Jon Keyser for Senate Statement of Organization at 1 (Jan. 11, 2016).

⁹ Resp. at 2; Keyser Affidavit ¶ 4.

¹⁰ Resp. at 2; Keyser Affidavit ¶ 3. The Commission's "testing the waters" rules explain that "[f]unds received solely for the purpose of determining whether an individual should become a candidate are not contributions." 11 C.F.R. § 100.72(a). The Commission has provided examples of testing-the-waters activities, including "travel." *Id.* All funds used to pay for testing-the-waters activities must comply with the Act's source restrictions and amount limitations. 11 C.F.R. § 100.72(b)(2).

1 this "core 'testing the waters' activity" did not trigger candidacy, and that Keyser therefore did
2 not violate Section 30125(e)(1)(A), which applies only to "candidates."¹¹

3 **III. FACTUAL AND LEGAL ANALYSIS**

4 **A. Legal Standard**

5 Under the Act, an individual is deemed to be a candidate if he or she "has received
6 contributions aggregating in excess of \$5,000 or has made expenditures aggregating in excess of
7 \$5,000."¹² The Act also provides that "[a] candidate . . . shall not . . . solicit, receive, direct,
8 transfer, or spend funds in connection with an election for Federal office, including funds for any
9 Federal election activity, unless the funds are subject to the limitations, prohibitions, and
10 reporting requirements of this Act."¹³ Under the Commission's regulations, to "solicit" means
11 "to ask, request, or recommend, explicitly or implicitly, that another person make a contribution,
12 donation, transfer of funds, or otherwise provide anything of value. . . . A solicitation does not
13 include mere statements of political support[.]"¹⁴

14 **B. The Soft-Money Allegation Is Unsupported By the Record**

15 The allegation that Keyser violated Section 30125(e)(1)(A) of the Act rests on the
16 assertion that he solicited soft-money funds in connection with a federal election.¹⁵ That

¹¹ Resp. at 2.

¹² 52 U.S.C. § 30101(2)(A). The Act also provides that an individual becomes a candidate if he or she "has given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions aggregating in excess of \$5,000 or has made such expenditures aggregating in excess of \$5,000." *Id.* § 30101(2)(B).

¹³ 52 U.S.C. § 30125(e)(1)(A); *see* 11 C.F.R. § 300.61.

¹⁴ 11 C.F.R. § 300.2(m). Although this provision applies to Part 300 — Non-Federal Funds, *i.e.*, the Commission's regulations implementing the Bipartisan Campaign Reform Act of 2002, P.L. 107-155 ("BCRA"), and by its terms applies to federal candidates, *see* 52 U.S.C. § 30125(e), we refer to its definition of "solicit" to determine what types of activity, if conducted by a candidate, would be prohibited.

¹⁵ Because Section 30125(e)(1)(A) applies only to federal candidates, federal officeholders and their agents, the allegation further relies on the argument that when Keyser solicited \$3 million in soft money, as alleged, he

1 assertion, however, is not adequately supported by the available record. The news articles cited
2 in the Complaint may be read to suggest that Keyser solicited or received soft-money funds for
3 his campaign prior to declaring his candidacy, but they do not provide any specific facts that
4 support such an inference. Moreover, Keyser explicitly denies soliciting or receiving soft-money
5 funds for his campaign at the RJC forum, or at any other point prior to declaring his candidacy,
6 and the record contains no facts to the contrary.¹⁶ Respondents explain that the potential
7 supporters that met with Keyser merely pledged their support for his candidacy.¹⁷ Further, the
8 Committee's first disclosure report supports Keyser's statement that he accepted no contributions
9 during his testing-the-waters period, as it did not disclose any contributions received prior to
10 Keyser becoming a candidate.¹⁸

11 In light of Keyser's sworn denial, and the lack of specific information in the record
12 indicating that Keyser made a solicitation or received soft money funds, the available
13 information is insufficient to support a reasoned inference that Keyser asked, requested,
14 recommended, or received a contribution or donation.¹⁹

15 **C. The Coordination Claim is Speculative and Unsupported**

16 The Complaint's coordination claim is speculative and unsupported by the available
17 record. The Complaint contends that if outside groups follow through on their funding

triggered candidacy. See Compl. at 3 (citing Advisory Op. 2015-09 Draft A (Senate Majority PAC) (Oct. 28, 2015)). Under these facts, we do not need to reach this issue of whether the alleged activity made Keyser a candidate because, as a threshold matter, the record does not support the conclusion that Keyser solicited or received soft money during his pre-candidacy phase.

¹⁶ Keyser avers: "Although I received offers of support during my time testing the water, I did not solicit or accept any contributions during this time." Keyser Affidavit ¶ 4.

¹⁷ See Resp. at 2.

¹⁸ See Jon Keyser for Senate, 2016 April Quarterly Report (Apr. 15, 2016).

¹⁹ See 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.2(m).

1 commitments to Keyser by paying for communications to support his candidacy, those
2 communications would be coordinated, and the outside groups would thereby be providing
3 illegal in-kind contributions to Keyser's campaign. This alleged violation has not yet occurred
4 and nothing in the record suggests that it "is about to occur."²⁰ The available facts do not
5 suggest that any outside group has spent, or is about to spend, \$3 million on coordinated
6 communications. To date, only one committee or person has made independent expenditures
7 supporting Keyser, or opposing any of his opponents in the 2016 Colorado Republican Primary;
8 that committee spent \$55,000.²¹ Moreover, Keyser was defeated in the 2016 Colorado Primary
9 election held on June 28, 2016, removing the possibility that any person or committee might still
10 make independent expenditures in support of his candidacy.²²

11 Because the allegations in the Complaint are unsupported by the record or speculative,
12 we recommend that the Commission find no reason to believe that Respondents violated the Act
13 or the Commission's regulations.

14 IV. RECOMMENDATIONS

- 15 1. Find no reason to believe that Jon Keyser violated 52 U.S.C. § 30125(e)(1)(A);
- 16 2. Find no reason to believe that Jon Keyser for Senate and Paul Kilgore in his official
17 capacity as treasurer violated 52 U.S.C. § 30125(e)(1)(A);
- 18 3. Approve the attached Factual and Legal Analysis;
- 19 4. Approve the appropriate letters; and

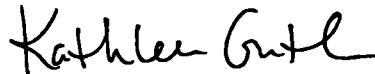
²⁰ 11 C.F.R. § 111.4(a).

²¹ See Colorado Conservative PAC, July 2016 Quarterly Report at 12, 13 (July 12, 2016)

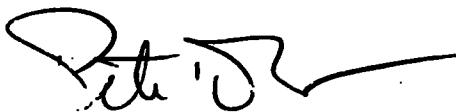
²² See Colorado Primary Election 2016 Results, DENVER POST (June 29, 2016), <http://www.denverpost.com/2016/06/28/colorado-primary-election-2016-live-results>.

5. Close the file.



Date: 9-7-16



Kathleen Guith
Acting Associate General Counsel for Enforcement



Peter Blumberg
Acting Deputy Associate General Counsel


Jin Lee
Acting Assistant General Counsel
Saurav Ghosh
Attorney

Attachment

Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENT:** Jon Keyser
4 Jon Keyser for Senate and Paul Kilgore
5 in his official capacity as treasurer

MUR 7008

6 **I. GENERATION OF MATTER**

7 This matter was generated by a complaint filed with the Federal Election Commission
8 (“Commission”) by American Democracy Legal Fund. *See* 52 U.S.C. § 30109(a)(1). In
9 December 2015, Jon Keyser, a Colorado state legislator then considering running for the U.S.
10 Senate in Colorado, traveled to Washington, DC to meet potential supporters and attend the
11 Republican Jewish Coalition (“RJC”) 2016 Presidential Candidate Forum. The Complaint
12 alleges that Keyser solicited \$3 million in soft money for his Senate campaign at that event, and
13 thereby violated 52 U.S.C. § 30125(e)(1)(A), a provision of the Federal Election Campaign Act
14 of 1971, as amended (“Act”). The Complaint also alleges that if outside groups use soft money
15 to pay for communications supporting Keyser’s candidacy, they would thereby be providing
16 illegal in-kind contributions to Keyser’s campaign.

17 Because these allegations are either speculative or unsupported by the available record,
18 the Commission finds no reason to believe that Jon Keyser, Jon Keyser for Senate and Paul
19 Kilgore in his official capacity as treasurer (“Respondents”) violated 52 U.S.C. § 30125(e)(1)(A).

20 **II. FACTUAL AND LEGAL ANALYSIS**

21 **A. Factual Background**

22 Jon Keyser declared his candidacy for the U.S. Senate on January 11, 2016, and
23 designated Jon Keyser for Senate as his authorized campaign committee and Paul Kilgore as its

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1 treasurer.¹ Prior to declaring his candidacy, Keyser traveled to Washington, DC to attend the
2 RJC Presidential Candidate Forum, which was held on December 3, 2015.

3 **B. Legal Standard**

4 Under the Act, an individual is deemed to be a candidate if he or she “has received
5 contributions aggregating in excess of \$5,000 or has made expenditures aggregating in excess of
6 \$5,000.”² The Act also provides that “[a] candidate . . . shall not . . . solicit, receive, direct,
7 transfer, or spend funds in connection with an election for Federal office, including funds for any
8 Federal election activity, unless the funds are subject to the limitations, prohibitions, and
9 reporting requirements of this Act.”³ Under the Commission’s regulations, to “solicit” means “to
10 ask, request, or recommend, explicitly or implicitly, that another person make a contribution,
11 donation, transfer of funds, or otherwise provide anything of value. . . . A solicitation does not
12 include mere statements of political support[.]”⁴

¹ See Jon Keyser Statement of Candidacy (Jan. 11, 2016); Resp. at 2 (Mar. 2, 2016); Keyser Affidavit ¶ 2. Keyser declared his candidacy for the U.S. Senate on January 11, 2016, although he concedes that he privately made the decision to become a candidate several days earlier, on January 7, 2016. Resp. at 2; Keyser Affidavit ¶ 2.

² 52 U.S.C. § 30101(2)(A). The Act also provides that an individual becomes a candidate if he or she “has given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions aggregating in excess of \$5,000 or has made such expenditures aggregating in excess of \$5,000.” *Id.* § 30101(2)(B).

³ 52 U.S.C. § 30125(e)(1)(A); *see* 11 C.F.R. § 300.61.

⁴ 11 C.F.R. § 300.2(m). Although this provision applies to Part 300 — Non-Federal Funds, *i.e.*, the Commission’s regulations implementing the Bipartisan Campaign Reform Act of 2002; P.L. 107-155 (“BCRA”), and by its terms applies to federal candidates, *see* 52 U.S.C. § 30125(e), its definition of “solicit” indicates what types of activity, if conducted by a candidate, would be prohibited.

C. The Soft-Money Allegation Is Unsupported By the Record

The allegation that Keyser violated Section 30125(e)(1)(A) of the Act rests on the assertion that he solicited soft-money funds in connection with a federal election.⁵ That assertion, however, is not adequately supported by the available record. The news articles cited in the Complaint may be read to suggest that Keyser solicited or received soft-money funds for his campaign prior to declaring his candidacy, but they do not provide any specific facts that support such an inference. Moreover, Keyser explicitly denies soliciting or receiving soft-money funds for his campaign at the RJC forum, or at any other point prior to declaring his candidacy, and the record contains no facts to the contrary.⁶ Respondents explain that the potential supporters that met with Keyser merely pledged their support for his candidacy.⁷ Further, the Committee's first disclosure report supports Keyser's statement that he accepted no contributions during his testing-the-waters period, as it did not disclose any contributions received prior to Keyser becoming a candidate.⁸

In light of Keyser's sworn denial, and the lack of specific information in the record indicating that Keyser made a solicitation or received soft money funds, the available information

⁵ Because Section 30125(e)(1)(A) applies only to federal candidates, federal officeholders and their agents, the allegation further relies on the argument that when Keyser solicited \$3 million in soft money, as alleged, he triggered candidacy. *See* Compl. at 3 (citing Advisory Op. 2015-09 Draft A (Senate Majority PAC) (Oct. 28, 2015)). Under these facts, the Commission does not need to reach this issue of whether the alleged activity made Keyser a candidate because, as a threshold matter, the record does not support the conclusion that Keyser solicited or received soft money during his pre-candidacy phase.

⁶ Keyser avers: "Although I received offers of support during my time testing the water, I did not solicit or accept any contributions during this time." Keyser Affidavit ¶ 4.

⁷ *See* Resp. at 2.

⁸ *See* Jon Keyser for Senate, 2016 April Quarterly Report (Apr. 15, 2016).

1 is insufficient to support a reasoned inference that Keyser asked, requested, recommended, or
2 received a contribution or donation.⁹

3 **D. The Coordination Claim is Speculative and Unsupported**

4 The Complaint's coordination claim is speculative and unsupported by the available
5 record. The Complaint contends that if outside groups follow through on their funding
6 commitments to Keyser by paying for communications to support his candidacy, those
7 communications would be coordinated, and the outside groups would thereby be providing
8 illegal in-kind contributions to Keyser's campaign. This alleged violation has not yet occurred
9 and nothing in the record suggests that it "is about to occur."¹⁰ The available facts do not suggest
10 that any outside group has spent, or is about to spend, \$3 million on coordinated
11 communications. To date, only one committee or person has made independent expenditures
12 supporting Keyser, or opposing any of his opponents in the 2016 Colorado Republican Primary;
13 that committee spent \$55,000.¹¹ Moreover, Keyser was defeated in the 2016 Colorado Primary
14 election held on June 28, 2016, removing the possibility that any person or committee might still
15 make independent expenditures in support of his candidacy.¹²

16 Because the allegations in the Complaint are unsupported by the record or speculative, the
17 Commission finds no reason to believe that Respondents violated 52 U.S.C. § 30125(e)(1)(A).

⁹ See 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.2(m).

¹⁰ 11 C.F.R. § 111.4(a).

¹¹ See Colorado Conservative PAC, July 2016 Quarterly Report at 12, 13 (July 12, 2016)

¹² See Colorado Primary Election 2016 Results, DENVER POST (June 29, 2016), <http://www.denverpost.com/2016/06/28/colorado-primary-election-2016-live-results>.